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Hoover Planned Mass Jailing in 1950

By TIM WEINER DEC. 23, 2007

Correction Appended

A newly declassified document shows that J. Edgar Hoover, the longtime director of the Federal Bureau of Investigation, had a plan to suspend habeas corpus and imprison some 12,000 Americans he suspected of disloyalty.

Hoover sent his plan to the White House on July 7, 1950, 12 days after the Korean War began. It envisioned putting suspect Americans in military prisons.

Hoover wanted President Harry S. Truman to proclaim the mass arrests necessary to “protect the country against treason, espionage and sabotage.” The F.B.I would “apprehend all individuals potentially dangerous” to national security, Hoover’s proposal said. The arrests would be carried out under “a master warrant attached to a list of names” provided by the bureau.

The names were part of an index that Hoover had been compiling for years. “The index now contains approximately twelve thousand individuals, of which approximately ninety-seven per cent are citizens of the United States,” he wrote.

“In order to make effective these apprehensions, the proclamation suspends the Writ of Habeas Corpus,” it said.

Habeas corpus, the right to seek relief from illegal detention, has been a fundamental principle of law for seven centuries. The Bush administration’s decision to hold suspects for years at Guantánamo Bay, Cuba, has made habeas corpus a contentious issue for Congress and the Supreme Court today.

The Constitution says habeas corpus shall not be suspended “unless when in cases of rebellion or invasion, the public safety may require it.” The plan proposed by Hoover, the head of the F.B.I. from 1924 to 1972, stretched that clause to include “threatened invasion” or “attack upon United States troops in legally occupied territory.”

After the terrorist attacks of Sept. 11, 2001, President Bush issued an order that effectively allowed the United States to hold suspects indefinitely without a hearing, a lawyer, or formal charges. In September 2006, Congress passed a law suspending habeas corpus for anyone deemed an “unlawful enemy combatant.”

But the Supreme Court has reaffirmed the right of American citizens to seek a writ of habeas corpus. This month the court heard arguments on whether about 300 foreigners held at Guantánamo Bay had the same rights. It is expected to rule by next summer.

Hoover's plan was declassified Friday as part of a collection of cold-war documents concerning intelligence issues from 1950 to 1955. The collection makes up a new volume of "The Foreign Relations of the United States," a series that by law has been published continuously by the State Department since the Civil War.

Hoover's plan called for "the permanent detention" of the roughly 12,000 suspects at military bases as well as in federal prisons. The F.B.I., he said, had found that the arrests it proposed in New York and California would cause the prisons there to overflow.

So the bureau had arranged for "detention in military facilities of the individuals apprehended" in those states, he wrote.

The prisoners eventually would have had a right to a hearing under the Hoover plan. The hearing board would have been a panel made up of one judge and two citizens. But the hearings "will not be bound by the rules of evidence," his letter noted.

The only modern precedent for Hoover's plan was the Palmer Raids of 1920, named after the attorney general at the time. The raids, executed in large part by Hoover's intelligence division, swept up thousands of people suspected of being communists and radicals.

Previously declassified documents show that the F.B.I.'s "security index" of suspect Americans predated the cold war. In March 1946, Hoover sought the authority to detain Americans "who might be dangerous" if the United States went to war. In August 1948, Attorney General Tom Clark gave the F.B.I. the power to make a master list of such people.

Hoover's July 1950 letter was addressed to Sidney W. Souers, who had served as the first director of central intelligence and was then a special national-security assistant to Truman. The plan also was sent to the executive secretary of the National Security Council, whose members were the president, the secretary of defense, the secretary of state and the military chiefs.

In September 1950, President Truman vetoed as unconstitutional a law authorizing the detention of "dangerous radicals" if the president declared a national emergency, but Congress voted overwhelmingly to override his veto and approve it. Truman did declare such an emergency in December 1950, after China entered the Korean War. But no known evidence suggests he or any other president approved any part of Hoover's proposal.

Correction: January 5, 2008

An article on Dec. 23 about a newly declassified plan by J. Edgar Hoover, when he was director of the Federal Bureau of Investigation, to suspend the writ of habeas corpus and imprison Americans suspected of disloyalty misstated the process by which the Internal Security Act of 1950, also known as the McCarran Act, became law. President Truman vetoed the measure as unconstitutional, but Congress voted overwhelmingly to override his veto and the measure then became law; Truman did not sign the bill.

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Hoover's Letter to Truman's Special Consultant

DEC. 22, 2007

From the Director of the Federal Bureau of Investigation
(Hoover) to the President's Special Consultant(Sidney Souers,
former Director of Central Intelligence)

Washington, July 7, 1950

My Dear Admiral:

For some months representatives of the FBI and of the
Department of Justice have been formulating a plan of action
for an emergency situation wherein it would be necessary to
apprehend and detain persons who are potentially dangerous to
the internal security of the country.I thought you would be
interested in a brief outline of the plan.

Action to Be Taken By the Department of Justice

The plan envisions four types of emergency situations: (1)
attack upon the United States; (2) threatened invasion; (3)
attack upon United States troops in legally occupied territory;
and (4) rebellion.

The plan contains a prepared document which should be referred to the President immediately upon the existence of one of the emergency situations for the President's signature.

Briefly, this proclamation recites the existence of the emergency situation and that in order to immediately protect the country against treason, espionage and sabotage the Attorney General is instructed to apprehend all individuals potentially dangerous to the internal security.

In order to make effective these apprehensions, the proclamation suspends the Writ of Habeas Corpus for apprehensions made pursuant to it. The plan also contains a prepared joint resolution to be passed by Congress and an Executive Order for the President which too will validate the previous Presidential proclamation.

The next step in the plan is a prepared order from the Attorney General to the Director of the FBI to apprehend dangerous individuals, conduct necessary searches and seize contraband as defined in the plan. Together with the order to the Director of the FBI the Attorney General will forward a master warrant attached to a list of names of individuals which names have previously been furnished from time to time to the Attorney General by the FBI as being individuals who are potentially dangerous to the internal security.

It should be pointed out that the plan does not distinguish between aliens and citizens and both are included in its purview. If for some reason the full plan is not put into operation it has so been drawn that the section applicable only to alien enemies may be put into effect.

Action to Be Taken By the FBI

For a long period of time the FBI has been accumulating the names, identities and activities of individuals found to be potentially dangerous to the internal security through investigation. These names have been compiled in an index which index has been kept up to date. The names in this index are the ones that have been furnished to the Department of Justice and will be attached to the master warrant referred to above. This master warrant will, therefore, serve as legal authority for the FBI to cause the apprehension and detention of the individuals maintained in this index.

The index now contains approximately twelve thousand individuals, of which approximately ninety-seven per cent are citizens of the United States. Immediately upon receipt of instructions and the master warrant from the Attorney General the various FBI Field Divisions will be instructed by expeditious means to cause the apprehension of the individuals within their various territories. Each FBI Field Division maintains an index of the individuals within its territory, which index is so arranged that it may be used for ready apprehension purposes. Upon apprehension the individuals will be delivered to the nearest jail for temporary detention and action by the Attorney General.

Detention and Subsequent Procedures

The permanent detention of these individuals will take place in regularly established Federal detention facilities. These facilities have been confidentially surveyed and the facilities have been found to be adequate in all areas except in the

territory covered by the FBI's New-York, Los Angeles and San Francisco Offices. In these three areas arrangements have been perfected with the National Military Establishment for the temporary and permanent detention in Military facilities of the individuals apprehended.

The plan calls for a statement of charges to be served on each detainee and a hearing be afforded the individual within a specified period. The Hearing Board will consist of three members to be appointed by the Attorney General composed of one Judge of the United States or State Court and two citizens. The hearing procedure will give the detainee an opportunity to know why he is being detained and permit him to introduce material in the nature of evidence in his own behalf. The hearing procedure will not be bound by the rules of evidence.

The Hearing Board may make one of three recommendations, that is; that the individual be detained, paroled or released. This action by the Board is subject to review by the Attorney General and the Attorney General's decision on the matter will be final except for appeal to the President.

The details of this plan as set forth in this communication have also been furnished on this date to Mr. James S. Lay, Jr., Executive Secretary, National Security Council.

With expressions of my highest esteem and best regards,

Sincerely yours,

J. Edgar Hoover